

animal shall be computed by multiplying one-half of the square of the sea otter's average adult length by 3.14 * * *

Done at Washington, D.C., this 19th day of September 1980.

Pierre A. Chaloux,

Deputy Administrator, Veterinary Services.

[FR Doc. 80-29609 Filed 9-23-80; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 82

Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine a portion of Broward County and a portion of Dade County in Florida and a portion of Los Angeles County in California because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Broward County, Florida, on September 11, 1980; Dade County, Florida, on September 12, 1980; and Los Angeles County, California, on September 13, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected areas.

EFFECTIVE DATE: September 15, 1980.

FOR FURTHER INFORMATION CONTACT: C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 2505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

SUPPLEMENTARY INFORMATION: These amendments quarantine a portion of Broward County and a portion of Dade County in Florida and a portion of Los Angeles County in California, because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement, and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined areas.

Accordingly, Part 82, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

1. In § 82.3(a)(1) relating to the State of Florida, new paragraphs (ii) and (iii)

relating to Broward County and Dade County are added to read:

§ 82.3 Areas quarantined.

(a) * * *

(1) *Florida.*

(ii) The premises of Bill's Bird Boutique, 4122 SW 64th Avenue, Davie, Broward County.

(iii) The premises of South Florida Bird Farm, 4444 SW 74th Avenue, Miami, Dade County.

2. In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of California and a new paragraph (a)(2) relating to the State of California is added to read:

(a) * * *

(2) *California.* The premises of David Mohilef, 4105 Jefferson Blvd., Los Angeles, Los Angeles County.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish its purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register**.

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 15th day of September 1980.

J. K. Atwell,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 80-29608 Filed 9-23-80; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

10 CFR Parts 206 and 708

Privacy Act; Records Maintained on Individuals; Correction

AGENCY: Department of Energy.

ACTION: Amendment to final rule.

SUMMARY: In the **Federal Register** (45 FR 61576) published September 16, 1980, 10 CFR Part 206 and 10 CFR Part 708 were inadvertently omitted from the heading and in the words of issuance.

EFFECTIVE DATE: October 16, 1980.

FOR FURTHER INFORMATION CONTACT:

Milton Jordan, Director, Office of Freedom of Information and Privacy Acts Activities, Office of Administration, Department of Energy, Room 5B-138, Forrestal Building, Washington, DC 20585, (202) 252-5955.

Leslie Borden Greenspan, Office of General Counsel, Room 6A-067, Forrestal Building, Washington, DC 20585, (202) 252-8618.

SUPPLEMENTARY INFORMATION: The words of issuance are amended to read as indicated below:

"Title 10 of the Code of Federal Regulations is amended as follows:

1. Parts 206 and 708 are revoked.
2. Part 1008 is added to read as set forth below:"

Issued in Washington, DC., on September 23, 1980.

Milton Jordan,

Director, Division of FOI and Privacy Acts Activities.

[FR Doc. 80-29476 Filed 9-23-80; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY**Internal Revenue Service****26 CFR Part 150****[T.D. 7720]****Temporary Excise Tax Regulations Under the Crude Oil Windfall Profit Tax Act of 1980; Interim Rule for Determining Base Prices for Tier 2 and Tier 3 Oil****AGENCY:** Internal Revenue Service, Treasury.**ACTION:** Temporary regulations.

SUMMARY: This document provides temporary excise tax regulations relating to the windfall profit tax on domestic crude oil imposed by title I of the Crude Oil Windfall Profit Tax Act of 1980. The temporary regulations provide rules to be followed by producers and purchasers of domestic crude oil. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the Federal Register.

DATES: These temporary regulations are effective with respect to oil removed after February 29, 1980.

FOR FURTHER INFORMATION CONTACT: David B. Cubeta of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-3297).

SUPPLEMENTARY INFORMATION:**Background**

On April 4, 1980, the *Federal Register* published temporary regulations (45 FR 23384) under sections 4986, 4987, 4988, 4989, 4991, 4992, 4993, 4994, 4995, 4996, 4997, 6050C, 6076, and 6402 of the Internal Revenue Code of 1954. The temporary regulations were required to implement various sections of the Crude Oil Windfall Profit Tax Act of 1980. This document contains an amendment to § 150.4989-1(c)(2) of those temporary regulations (relating to the interim rule for determining tier 2 and tier 3 base prices).

The regulations promulgated in this document are also proposed to be prescribed as final Excise Tax Regulations (26 CFR Part 51).

Explanation of provisions

Numerous commentators on the proposed windfall profit tax regulations published on April 4, 1980 requested that further guidance be provided as to what constitutes a valid posted price for purposes of the interim base price rule for tier 2 and tier 3 oil. Several

commentators suggested that the concepts contained in FEA Ruling 1977-1, which sets forth the criteria for a valid posted price in determining ceiling prices, be adopted for the purpose of determining which prices should be used in computing the interim base prices for tier 2 and tier 3 oil. That suggestion has been accepted, and these regulations adopt the principles contained in FEA Ruling 1977-1 with the modifications necessary to conform those rules to the windfall profit tax.

Because these regulations are effective with respect to oil removed after February 29, 1980, purchasers will be required to make withholding adjustments if it is determined that an improper base price has been used in computing windfall profit tax withholding.

Waiver of Procedural Requirements of Treasury Directive

The expeditious adoption of the provisions contained in this document is necessary because of the need for immediate guidance to taxpayers liable for the windfall profit tax on domestic crude oil and to other persons required to withhold and deposit tax, file returns, provide information, etc. For this reason, Jerome Kurtz, Commissioner of Internal Revenue, has determined that the provisions of paragraphs 8 through 14 of the Treasury Department directive implementing Executive Order 12044 must be waived.

Drafting Information

The principal author of these regulations is David B. Cubeta of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, part 150, Temporary Excise Tax Regulations under the Crude Oil Windfall Profit Tax Act of 1980, is amended as follows:

Paragraph 1. Paragraph (c) of § 150.4989-1 is amended by revising the flush language following subparagraph (2)(ii)(B). Amended paragraph (c) reads as follows:

§ 150.4989-1 Adjusted base price.

- * * * * *
- (c) *Base prices for tier 2 and tier 3 oil—*(1) *General rule.* [Reserved]
(2) *Interim rule.* This subparagraph and subparagraph (3) apply to oil

removed during a month beginning before October 1980 (or such earlier date as may be provided in regulations taking effect before such earlier date). Except as provided in subparagraph (3), the base prices for tier 2 oil and tier 3 oil, respectively, shall be the product of—

(i)(A) The highest posted price for December 31, 1979, for uncontrolled crude oil of the same grade, quality, and field, or

(B) If there is no posted price described in inferior subdivision (A), the highest posted price for such date for uncontrolled crude oil at the nearest domestic field for which prices for oil of the same grade and quality were posted for such date, multiplied by

(ii) A fraction the denominator of which is \$35, and the numerator of which is—

(A) \$15.20 for purposes of determining base prices of tier 2 oil, and

(B) \$16.55 for purposes of determining base prices of tier 3 oil.

In determining the base price for tier 2 or tier 3 oil, the grade and quality of the oil produced in December 1979 shall be used. For purposes of determining the highest posted price for December 31, 1979, "posted price" means a written statement of crude oil prices constituting an offer to purchase oil at that price circulated publicly among sellers and buyers of crude oil in a particular field in accordance with historic practices. Although the formality of a printed price bulletin such as is published by major purchasers is not necessary for a price to be a valid posted price, the formality of a publicly circulated written offer is necessary. The requirement that the offer be in writing and publicly circulated eliminates oral offers and offers made only to specified producers. Accordingly, other than the published price bulletins of the type traditionally issued by major oil companies, written offers to purchase constitute a "posted price" only if they are bona fide public offers of general applicability to crude oil producers in the field. For example, a letter from a purchaser to all crude oil producers in a field or in an area would constitute a posted price if the letter was a bona fide offer to purchase from all producers in that field or area. A written contract, of course, would not qualify as a posted price because it represents an agreement between a buyer and specific producer, not a bona fide offer to purchase from all producers. Accordingly, in determining the "highest posted price," a producer should first determine which offers qualify as posted prices for December 31, 1979. Because a posted price must constitute an offer to purchase, an offer does not constitute a posted price for December 31, 1979

unless the offer was initially made on or before December 31, 1979, and was in effect for oil purchased on that date. However, in determining the highest posted price for December 31, 1979, a valid posted price that was adjusted in a subsequent posted price circulated on or before January 14, 1980 shall be considered to be an offer made at the price as adjusted so long as the adjusted price applies to all oil purchased pursuant to the initial offer. In determining which posted prices were applicable to a particular field on December 31, 1979, the term "field" means a general area underlain by one or more reservoirs. Historical field designations commonly used by regulatory agencies and the oil industry will generally be used in the determination of a given field. Price bulletins which specify only a geographical area and crude oil grade (e.g., "West Texas Sour") are presumed to be applicable to every field within the named area, unless a particular field is specifically excluded. However, the existence of a price bulletin stating a higher price for specifically named fields within the same area supersedes the area-wide price bulletin for the named field only. Finally, posted prices do not include either offers to buy at a price not specified in a sum certain (e.g., a price "determined by the purchaser to be competitive") or premiums above posted prices which may have been paid for crude oil purchased on December 31, 1979.

(3) *Minimum interim base price.* The base price determined under paragraph (c)(2) of this section for tier 2 oil or tier 3 oil shall not be less than the sum of—

(i) The ceiling price which would have applied to such oil under the March 1979 energy regulations if it had been produced and sold in May 1979 as upper tier oil, plus

(ii) (A) \$1 in the case of tier 2 oil, or

(B) \$2 in the case of tier 3 oil. For purposes of this determination, the grade and quality of the oil produced from the property in May 1979 shall be used.

* * *

There is need for the immediate guidance provided by the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Secs. 4997 and 7805 of title 26 of the United States Code)

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: September 17, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 80-29588 Filed 9-19-80; 4:34 pm]

BILLING CODE 4830-01-M

VETERANS ADMINISTRATION

38 CFR Part 18

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: This regulation establishes procedures and policies to assure nondiscrimination based on handicap in programs and activities receiving Federal financial assistance from the VA (Veterans Administration). The part is designed to comply with section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794, and Executive Order 11914, which relate to nondiscrimination against handicapped persons in programs receiving Federal financial assistance.

EFFECTIVE DATE: September 24, 1980.

FOR FURTHER INFORMATION CONTACT: Miss Marion M. Slachta (091S), Equal Opportunity Specialist, Office of Human Goals, Telephone Number 202-389-2943.

SUPPLEMENTARY INFORMATION:

Background

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits discrimination on the basis of handicap by recipients of Federal Assistance. Pursuant to Executive Order 11914 (April 28, 1976) HEW (Department of Health, Education and Welfare) was given the responsibility to coordinate the implementation of section 504 among all Federal agencies and departments that dispense Federal assistance. On January 13, 1978, HEW issued regulations that defined generally the types of practices forbidden by the Rehabilitation Act and spelled out the responsibilities of Federal agencies to implement and enforce section 504. See 45 CFR 85.1-85.58. Subsequently, the VA proposed regulations which are similar to those issued by HEW (45 CFR Part 84) for its programs with changes made to meet specific VA organizational, procedural, and program requirements. There are only minor substantive

deviations between the VA regulations and those of HEW's successor agencies, the Department of Education and the Department of Health and Human Services.

Overview of Regulation

The regulation is divided into seven subparts. Sections 18.401-18.410 (General Provisions) define the important terms that are used throughout the regulation and states in general terms the discriminatory acts that are prohibited. They also set forth what the Administrator believes is a simple, workable system of administration: assurances of compliance, self-evaluation by recipients, establishment of grievance procedures, and notification of employees and beneficiaries of the recipient's policy of nondiscrimination on the basis of handicap. The regulation covers all types of physical and mental impairments, including drug addiction and alcoholism.

Sections 18.411-18.414, dealing with employment practices, bar discrimination by recipients of VA assistance in recruitment, hiring, compensation, job assignment and classification, and fringe benefits. They also require employers to make reasonable accommodation to qualified handicapped applicants or employees unless it can be demonstrated that the accommodation would impose an undue hardship on the employer.

Sections 18.421-18.423 set forth the central requirement of the regulation—program accessibility. All new facilities are required to be constructed so as to be readily accessible to and usable by handicapped persons. Every existing facility need not be made physically accessible, but all recipients must ensure that programs conducted in those facilities are made accessible. While flexibility is allowed in choosing methods that in fact make programs in existing facilities accessible, structural changes in such facilities must be undertaken if no other means of assuring program accessibility is available.

Sections 18.401-18.423 of the regulation, as well as § 18.61—which incorporates by reference the VA's procedures under Title VI of the Civil Rights Act of 1964—apply to all recipients of financial assistance from the VA. The remaining subparts of the regulation contain more specific requirements applicable to three major classes of recipients.

Sections 18.431-18.439 concerned with preschool, elementary, and secondary education. They require, basically, that recipients operating public education

programs provide a free appropriate education to each qualified handicapped child in the most normal setting appropriate. The regulation also sets forth evaluation requirements designed to ensure the proper classification and placement of handicapped children, and due process procedures for resolving disputes over placement of students.

Sections 18.441-18.447 deal with postsecondary education. They proscribe discrimination against handicapped persons in recruitment, admission, and treatment after admission. Colleges and universities are required to make reasonable adjustments to permit handicapped persons to fulfill academic requirements, and to ensure that they are not effectively excluded from programs because of the absence of auxiliary aids.

Finally, §§ 18.451-18.454 deal with health and other social service programs. They forbid discrimination in providing such services and requires larger recipients to provide auxiliary aids to handicapped individuals where necessary. Specific provisions require hospitals not to discriminate against addicts or alcoholics who need medical services and to establish emergency room procedures for communication with persons with impaired hearing.

On November 6, 1978, the Congress amended section 504 to include "any program or activity conducted by any Executive agency or by the United States Postal Service," and to require those agencies to "promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation Comprehensive Services, and Developmental Disabilities Act of 1978." This regulation is not designed to implement that amendment. These regulations, as they now appear, have been approved by HEW pursuant to Executive Order 11914 and by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

The detailed HEW analysis and application of its regulation's subparts are set forth in Appendix A to 45 CFR Part 84 (1979). Due to the existence of the HEW regulations and accompanying explanation, there is no need to additionally set forth our analysis of the regulations which would not differ from that offered by HEW.

Impact of Recent Court Decisions

This part requires that employers make reasonable accommodation to the handicaps of qualified handicapped applicants or employees, and that programs be readily accessible to and usable by the qualified handicapped. These requirements must be read in the

light of *Southeastern Community College v. Davis*, 442 U.S. 397 (1979) where the Supreme Court first considered the reach of section 504 of the Rehabilitation Act.

Davis held that section 504 did not require the petitioner college to make fundamental alterations to its registered nurses' training program in order to accommodate the severe hearing loss of respondent who had applied for admission to the program as a student. The Court held that the respondent failed to meet the legitimate and necessary physical requirements of the program, established by petitioner, and hence, was not qualified to participate in the program. The Court noted that the section 504 regulations of the Department of Health, Education and Welfare (45 CFR 84.3(k)(3) (1978)) reinforced the Court's conclusion that the respondent was not qualified to be a student in petitioner's training program. *Id.* at 406. Section 84.3(k)(3) of Title 45 provides that, as to postsecondary and vocational services, a "qualified handicapped person" means "a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipients' educational program or activity." An explanatory note to the HEW regulations defines "technical standards" as "all nonacademic admissions criteria * * * essential to participation in the program in question." 45 CFR pt. 84, App. A, at p. 405.

While the HEW section 504 regulations relating to postsecondary education require recipients to modify any academic requirements that might discriminate against the qualified handicapped and, further, require the provision of educational "auxiliary aids" (e.g., taped texts, interpreters, classroom equipment, readers in libraries) (45 CFR 84.44(a), (d)) where necessary to avoid discrimination, the Court noted these regulatory provisions did not require fundamental programmatic and personal service adjustments needed by the respondent.

First, the Court noted that petitioner's training program required "the ability to understand speech without reliance on lipreading" to ensure "patient safety during the clinical phase of the program," and that the respondent would require the "close individual attention by a nursing instructor" in order to participate effectively in clinical work. *Id.*, at 407-409. However, the HEW regulation requiring auxiliary aid specifically excludes "attendants, individually prescribed devices, readers for personal use or other study, or other

devices or services of a personal nature." 45 CFR 84.44(d)(2). Accordingly, in the Court's view, the law did not require the petitioner to provide respondent with an attendant nursing instructor since, in the context of a clinical program where each student would be required to deal individually with patients, this would have constituted "services of a personal nature." Hence the respondent could not qualify for the clinical segment of the training program and would be confined to taking academic courses only.

Second, academic "modifications" set forth in the HEW regulation include (but are not necessarily limited to):

Changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. (45 CFR 84.44).

However, as the Court saw it, such required modifications did not encompass a curricular change which waived effective participation in a critical component of a degree program in registered nursing. "Whatever benefits respondent might realize from such a course of study, she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.*, at 410.

While rejecting respondent's gloss on section 504 and HEW's implementing regulations, the Court inferentially upheld the HEW regulation mandating modification in admission criteria for the qualified handicapped by noting that "situations may arise where a refusal to modify an existing program might become unreasonable and discriminatory." *Id.*, at 412-413. This subpart is consistent with the holding in *Davis* for it prohibits discrimination only against the qualified handicapped in the Agency's federally assisted programs and activities.

HEW has construed section 504 to prohibit employment discrimination against the handicapped in all programs receiving Federal financial assistance. See HEW's section 504 regulations, 42 FR 22680 (May 4, 1977) and 45 CFR 84.11 (1979). Several courts have construed section 504 to cover employment discrimination. See, e.g., *Duran v. City of Tampa*, 430 F. Supp. 75 (M.D. Fla. 1977), *Drennon v. Philadelphia General Hospital*, 428 F. Supp. 809 (E.D. Pa. 1977). To date, two courts of appeals have taken a narrower view. In *Trageser v. Libbie Rehabilitation Center, Inc.*, 590 F.2d 87 (4th Cir. 1978), cert. denied, 442 U.S. 947 (1979); *Carmi v. Metropolitan St. Louis Sewer District*, No. 79-1325 (8th Cir. May 6, 1980). In *Trageser*, the

court held that employment discrimination is prohibited by section 504 only to the extent that it is prohibited by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* (1970). Title VI, which prohibits racial discrimination in programs receiving Federal financial assistance, covers employment discrimination only (1) "where a primary objective of the Federal financial assistance is to provide employment" (section 604 of Title VI, 42 U.S.C. 2000d-3 (1970)), or (2) when the recipient's employment discrimination results in discrimination against the ultimate beneficiaries of the program receiving Federal financial assistance (see *Caulfield v. Board of Education*, 583 F.2d 605 (2d Cir. 1978)). Neither of these factors was present in *Trageser*.

The court's decision appears to rest solely on the language of section 120(a) of the Rehabilitation Act Amendments of 1978, which provides that "the remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964 shall be available" to persons aggrieved because of section 504 violations. Accordingly, "in the absence of legislative history to the contrary," the court held that section 120(a) of the Rehabilitation Act Amendments 1978 incorporated the limitations of Title VI coverage as to employment discrimination. *Id.*, at 89.

The court, in its analysis, did not focus on the remedial purpose of section 504 to provide broad protections to the handicapped. Nor did the court consider the legislative history of the Rehabilitation Act of 1973 and its subsequent amendments which reflect the continuing congressional concern for the employment problems of the handicapped. See, e.g., S. Rep. No. 93-318, 93rd Cong., 1st Sess. 18-19, 70 (1973); S. Rep. No. 93-319, 93rd Cong., 1st Sess. 2, 8 (1973); H.R. Rep. No. 95-1149, 95th Cong., 2d Sess. 16, 18, 23-29, 34, 38, 42-43 (1978); S. Rep. No. 95-890, 95th Cong., 2d Sess. 8, 13, 20-21, 27, 36 (1978); H.R. Conf. Rep. No. 95-1780, 95th Cong., 2d Sess. 80-81, 94-96, 98, 102 (1978). Further, the legislative history of section 120(a), which apparently was not brought to the attention of the court, indicates that the provision was not intended to limit the scope of section 504 but was merely a legislative ratification of HEW's enforcement procedures under section 504.

Section 120(a) was originally a provision in S. 2600 (95th Cong., 2d Sess., Section 118(a) (1978)); the Senate version of the Rehabilitation Act Amendments of 1978 reported by the Senate Committee on Human Resources

on May 15, 1978. The Committee stated, with respect to section 120(a):

It is the committee's understanding that the regulations promulgated by the Department of Health, Education, and Welfare with respect to procedures, remedies, and rights under section 504 conform with those promulgated under title VI. Thus, *this amendment codifies existing practice as a specific statutory requirement.* (Sen. Rep. No. 95-890, 95th Cong., 2d Sess. 19 (1978).) (Emphasis added)

In view of the legislative history of the Rehabilitation Act of 1973 and its amendments, HEW's administrative construction, the remedial nature of section 504 and the legislative history of section 120(a), the Veterans Administration believes that the employment practices of recipients of Federal financial assistance are covered by section 504 regardless of the purpose of the assistance, and the agency's proposed regulations reflect this view (§§ 18d.11-18d.14).

At least one other court, when confronted with the rationale of the *Trageser* decision, has also rejected the limitation of section 504 to the analogous bounds of section 604 of Title VI. In that decision, *Hart v. Alameda County Probation Department*, 485 F. Supp. 66 (N.D. Cal., 1979), the court, examining the legislative history of section 504, rejected the inference that the 1978 amendments restricted the scope of section 504. Further, the court found that Congressional intent was to expand the remedies of the Act, thus, covering employment in programs receiving Federal financial assistance.

Comments have been received which object to the coverage of employment practices in programs receiving Federal financial assistance. The arguments of these commenters, similar to those raised in the foregoing discussion, have been fully considered. We do not find that the arguments offered constitute the better view of the law nor do they comport with the purpose of section 504 as reflected by its legislative history.

Rulemaking History

A proposed version of Subpart D of Part 18 of title 38, Code of Federal Regulations, was published for notice and comment in the *Federal Register* on May 3, 1978 (43 FR 19166).¹ In response to that proposal, the VA received a small number of public comments including those made at the public hearing held June 26, 1978. Those comments covered a variety of issues; many of which were duplicative. Some commenters suggested that the proposed regulation went too far, while others

complained that it did not go far enough. Many of the issues raised by the comments were fully considered in designing the proposed regulation, and are addressed elsewhere in this commentary. In most instances, the Veterans Administration continues in the view that the proposed regulation represented the best resolution of the conflicting viewpoints.

HEW's review of the proposed final regulations, conducted pursuant to 45 CFR 85.4(b), found no major inconsistencies between the VA regulation and the Executive Order guidelines. However, HEW requested several changes which it viewed as required by the Executive Order. Those changes have resulted in the addition of § 18.403(j)(2)(iv)(B), relating to persons treated as having an impairment, and a redesignation of the proposed section; deletion of proposed § 18.403(k)(4), concerning training in VA health care facilities; deletion of proposed § 18.405(d), covering outside services; and deletion of proposed § 18.409(b), which would have permitted the Administrator to exempt certain recipients from compliance. Also, at HEW's request § 18.405(c), which would have in certain circumstances permitted the granting of a waiver for portions of a recipient's programs, was revised to analogize it to 38 CFR 18.4(d) which governs the scope of coverage of Title VI of the Civil Rights Act of 1964.

Additionally, at HEW's request, §§ 18.404(d), covering communications, 18.406(c)(3), covering self-evaluation by new recipients, and 18.407(b), covering grievance procedures were added. Also, § 18.414(b), providing for preemployment inquiry, was changed. Other sections have had minor revisions made to make the regulations resemble those of HEW more closely.

Other comments ranged widely in scope. One comment requested specific inclusion in § 18.403(f) of the term "subrecipient." The definition of recipient in § 18.403(f) adequately covers the concept of subreciprocity and therefore obviates the need for a separate definition. Also, proposed § 18.405(d) which related to the use of outside individuals or organizations was deleted. Section 18.403(f) covers this situation.

Comments concerning § 18.403(h) raised objection to the scope of coverage. One commenter requested that coverage be extended to contracts of insurance and guarantee. For well-established reasons the VA is unable to extend coverage to those areas. Section 504 was modeled on Title VI of the Civil Rights Act of 1964 and Title IX of the Education Act Amendments of 1972.

¹ Originally proposed as 38 CFR Part 18d.

Neither of the models prohibit discrimination in contracts of insurance or guarantee.

On the other hand, one comment suggested that the scope of coverage was too broad and that it might be used to bind private employers who do not receive Federal financial assistance. The specific circumstances involved veterans' on-the-job and apprenticeship programs. Present interpretation by this agency is that an employer's participation in either of those programs would bring them within the purview of section 504.

Another comment suggested modifying § 18.403(j), defining "handicapped person," to emphasize serving those with the most severe disabilities. Such an emphasis is not proper as a part of the regulation. Nor is such emphasis in line with the full intent of section 504.

One comment raised a question whether "essential functions" in the definition of "qualified handicapped person" in § 18.403(k)(1) means employers may be forced to split jobs to accommodate the handicapped. The phrase is useful in emphasizing that handicapped persons should not be disqualified simply because they may have difficulty in performing tasks that bear only a marginal relationship to a particular job. In some instances job modification can be anticipated as reasonable accommodation to the handicapped person who can perform the "essential functions" of the job. Another comment suggested that the definition of a "qualified handicapped person" be strengthened by requiring an employer to show that a handicapped person is not qualified for employment. In light of §§ 18.411-18.414 of the regulations covering employment practices, modification of this section, is unwarranted and would be inconsistent with the concept of reasonable accommodation.

Several comments were received concerning unnecessarily separate services for handicapped persons. One comment sought the deletion of § 18.404(b)(2) which provides for equal opportunity for handicapped persons to achieve the same benefit in the most integrated setting appropriate to the person's needs. That comment expressed the opinion that the language of § 18.404(b)(1)(iv) was sufficient. Another comment sought expansion of § 18.404(b)(3) to require all programs and activities to be administered in the most integrated setting appropriate. The VA adheres to the rule as proposed which is in conformance with that of HEW. The HEW regulations are based upon the concept of equal effectiveness

in the most integrated setting appropriate. To impose a different standard from that of the HEW regulations would cause confusion among recipients who must comply with both HEW and VA regulations.

Comments were received requesting that the regulation address the needs of persons with impaired hearing and vision. Consequently, § 18.404(d) has been added to require a recipient to take appropriate action to ensure such communication. The section follows that of 45 CFR 85.51(e) of the HEW Guidelines. These changes are not intended to constitute a substantive deviation from the HEW regulations.

Objections were received to the waiver provisions of § 18.405(c). As discussed previously, § 18.405(c) has been revised and the provisions permitting waiver removed. The section as it now exists is analogous to the extent of coverage by Title VI of a recipient's facilities.

One comment suggested that the remedial action of § 18.406(a) did not afford relief for those handicapped persons who were in a program but were not receiving full benefits because of discrimination. The VA concurs that the circumstance should be covered and consequently § 18.406(a)(3)(iii) has been added.

Objection was also expressed, in several comments, to the fifteen employee limitation which appears throughout the regulations. This approach is used to avoid imposing requirements on small recipients that would create unnecessary and counterproductive paper work burdens on them and unduly stretch the enforcement resources of the VA. Section 18.409 permits the Administrator to require a small recipient to comply with §§ 18.407 and 18.408, in whole or in part, when a violation is found or when it will not impair the ability of the recipient to provide benefits.

One comment suggested that the 1-year period for self-evaluation contained in § 18.406(c) should be shortened to prevent further discrimination. The self-evaluation provisions are multifaceted and if properly implemented require considerable time. Reduction of the time within which a recipient must complete the process might serve to reduce effectiveness. Consequently, the time limit remains unchanged.

In response to comments objecting to § 18.409(b), which would have permitted at the Administrator's discretion the exemption of certain recipients from compliances with §§ 18.406(c) and 18.407, the section has been deleted. The section was considered to be

inconsistent with the agency-wide coordination regulations.

One comment regarding § 18.412 objected to the circumstances under which some recipients might avoid making reasonable accommodation because it would constitute an undue hardship on the operation of their programs. The section as it stands constitutes a fair balancing of the interests involved. The standards for application of undue hardship are reasonably clear; thus all parties are protected.

Section 18.413, concerning among other things tests, was objected to because of the possibility of adverse impact of tests upon handicapped persons. This regulation is an application of the principle established under Title VII of the Civil Rights Act of 1964 in *Griggs v. Duke Power Company*, 401 U.S. 424 (1971). Simply stated, once it is shown that an employment test substantially limits the opportunities of handicapped persons, the employer must show the test to be job-related. The regulation as it stands is consistent with HEW's regulations and constitutes a workable rule.

Several comments were received regarding preemployment medical examinations. One comment objected to the form of our proposed § 18.414 referring to the analogous section of HEW's regulation. Section 18.414(b) has been revised to conform more closely to the HEW regulation. This resolves the issues raised in the comments.

Several comments requested that special provisions relating to program accessibility in historic properties be included in the regulations. The purpose of the suggested provisions was to increase protection of historic properties. In view of the already existing protections afforded historic properties by other provisions of law, the suggested additions are unnecessary. Also, the language of § 18.422 provides different standards of accessibility for existing facilities.

One comment requested that § 18.422(c) relating to certain recipients with less than fifteen employees, should be modified by language similar to that contained in § 18.433(c) in referral situations. Accordingly, § 18.422(c) has been amended to make such provision.

The Architectural and Transportation Barriers Compliance Board suggested that the regulation provide the Architectural Barriers Act is applicable to new construction. Since the provisions of the Architectural Barriers Act would only apply in limited circumstances, reference to the Act could possibly result in misinterpretation of the regulations. Of

course, those recipients receiving grants requiring compliance with the Act would be otherwise aware of its applicability. The Board of course will be consulted as required by the coordination regulation, 45 CFR 85.7(a).

One comment requested that the last sentence of § 18.423(c) should be amended to provide for "usability of" the facility. The purpose of the change would be to provide not only for equivalent access but also for equivalent use. The change has been adopted.

In response to an objection that the standard in § 18.423(c) is inadequate, it is noted that the 1971 ANSI standard for making buildings and facilities accessible to, and usable by, the physically handicapped is used to determine whether compliance has occurred in the design, construction or alteration of a facility by a recipient. The Veterans Administration is aware that development of a new ANSI standard in this area was completed in December 1979 and was formally published in May 1980. It is unclear at the moment whether that standard or a modification thereof will be adopted as a Federal standard. The Veterans Administration intends to adopt whatever standard is accepted throughout the Federal government and will modify these regulations accordingly at the appropriate time.

Several comments addressed various provisions of the regulations as they might conflict with other provisions of law, principally section 503 of the Rehabilitation Act of 1973. The issues raised by the comments are covered in the agency wide coordination regulations, 45 CFR 85.7(b). The regulations as they stand do not create a conflict.

Comments were received concerning the proposed enforcement of these regulations. Some recipients of Federal funds will be subject to the regulations of the VA, as well as other government agencies. A delegation of section 504 responsibility between the VA and other agencies is contemplated to eliminate duplication and will be similar to the existing delegation regarding Title VI of the Civil Rights Act of 1964. See 38 CFR Part 18a. Under the Title VI delegation of responsibility, HEW (now Department of Education and Department of Health and Human Services) has responsibility for institutions of higher learning, public schools, hospitals, and other health facilities; and the VA is responsible for proprietary schools.

One comment suggested that Appendix A to the regulations provide a listing of not only those programs

covered but also those programs not covered. Such a listing would be of little use since coverage by these regulations would be well known to both recipients and program participants.

Provisions have been made to make these regulations available to the visually impaired.

Approved: September 17, 1980.

Max Cleland,
Administrator.

Part 18 of Title 38 of the Code of Federal Regulations is amended by designating §§ 18.1 through 18.13 and Appendices A and B as "Subpart A—General" and by adding a new Subpart D to read as set forth below. Subparts B and C will be reserved.

Subpart D—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance

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Appendix A.—Statutory Provisions to Which This Part Applies.

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 122(d)(2), Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, 92 Stat. 2985 (29 U.S.C. 794).

Subpart D—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance

General Provisions

§ 18.401 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 18.402 Application.

This part applies to each recipient of Federal financial assistance from the Veterans Administration and to each program or activity that receives or benefits from such assistance.

§ 18.403 Definitions.

As used in this part, the term:

(a) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, and Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, Pub. L. 95-602, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 *et seq.*

(d) "Agency" means the Veterans Administration.

(e) "Administrator" means the Administrator of Veterans Affairs.

(f) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended

directly or through another recipient, including any successor, assignee, or transferee of a recipient but excluding the ultimate beneficiary of the assistance.

(g) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by an Agency official or by a recipient as a condition to eligibility for Federal financial assistance.

(h) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the Agency provides or otherwise makes available assistance in the form of:

(1) Funds, including funds extended to any entity for payment to or on behalf of students admitted to that entity, extended directly to those students for payment to that entity, or extended directly to those students contingent upon their participation in a program of education or training of that entity;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(i) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(j) "Handicapped person." (1) Handicapped person means any person who:

(i) Has a physical or mental impairment which substantially limits one or more major life activities;

(ii) Has a record of such an impairment; or

(iii) Is regarded as having such an impairment.

(2) As used in paragraph (j)(1) of this section, the phrase:

(i) "Physical or mental impairment" means:

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal; special sense organs including speech organs; respiratory; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(B) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or

mental illness, and specific learning disabilities.

(C) The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means:

(A) Has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation;

(B) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment;

(C) Has none of the impairments defined in paragraph (j)(2)(i) of this section, but is treated by a recipient as having such an impairment.

(k) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public elementary, secondary, or adult educational services, a handicapped person:

(i) Of an age during which nonhandicapped persons are provided such services;

(ii) Of any age during which it is mandatory under State laws to provide such services to handicapped persons; or

(iii) To whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standards requisite to admission or participation in the recipient's education program or activity; and

(4) With respect to other services, a handicapped person who meets the

essential eligibility requirements for the receipt of such services.

(l) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (j) of this section.

§18.404 Discrimination prohibited.

(a) *General.* No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) *Discriminatory actions prohibited.*

(1) A recipient, in providing an aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service that is equal to that afforded others;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) Aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must give handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated

setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that:

(i) Have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap.

(ii) Have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or

(iii) Perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections that:

(i) Have the effect of excluding handicapped persons from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity that receives or benefits from Federal financial assistance, or

(ii) Have the purpose or effect of defeating or substantially impairing the accomplishment of the objective of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) *Programs limited by Federal law.* The exclusion of nonhandicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or Executive order to a different class of handicapped persons is not prohibited by this part.

(d) *Special communication.* Recipients shall take appropriate action to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 18.405 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance on a form specified by the Administrator, that the program will be operated in compliance with this part.

(b) *Duration of obligation.* (1) When Federal financial assistance is extended in the form of real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits.

(2) Where Federal financial assistance is extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Extent of application to institution or facility.* An assurance shall apply to the entire institution or facility unless the applicant establishes, to the satisfaction of the Administrator, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought, or the beneficiaries of or participants in such a program. If the assistance is being received or requested for the construction of a facility or part of a facility, the assurance shall apply to the entire facility and to other facilities operated in connection with the facility.

(d) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provisions of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Agency, the covenant shall also include a condition coupled with a right to be reserved by the Agency to revert title to the property if there is a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purpose for which the property was transferred, the Administrator may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as he or she considers appropriate, agree to forbear the exercise of the right to revert title for as long as the lien of the mortgage or other encumbrance remains effective.

(e) *Other methods of enforcement.* (1) Recipients are required to keep such records as the responsible VA official deems necessary for complete and accurate compliance reports. The VA can specify intervals for reporting and prescribe the form and content of information required to ascertain whether the recipient has complied or is complying with the law.

(2) Periodic compliance reviews of training establishments will be conducted by VA compliance officers. During these reviews recipients are required to permit access by VA compliance officers during normal business hours to such of their books, records, accounts, facilities and other sources of information including interviews with personnel and trainees as may be pertinent to ascertain compliance with the law.

(3) From study of documentation, results of interviews, and observation of activities during tours of facilities, compliance officers will evaluate recipients' compliance status.

§ 18.406 Remedial action, voluntary action and self-evaluation.

(a) *Remedial action.* (1) If the Administrator finds that a recipient has discriminated against qualified persons on the basis of handicap in violation of section 504 or this part, the recipient shall take such remedial action as the Administrator considers necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against qualified persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Administrator, where appropriate, may

require either or both recipients to take remedial action.

(3) The Administrator may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action with respect to:

(i) Handicapped persons who are no longer participants in the recipient's program but who were participants in the program when such discrimination occurred;

(ii) Handicapped persons who would have been participants in the program had the discrimination not occurred; or

(iii) Handicapped persons presently in the program, but not receiving full benefits or equal and integrated treatment within the program.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons, its current policies and practices and the effects of the policies and practices that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient that employs fifteen or more persons shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Administrator upon request:

(i) A list of the interested persons consulted;

(ii) A description of areas examined and any problems identified; and

(iii) A description of any modifications made and of any remedial steps taken.

(3) Recipients who become such more than one year after the effective date of these regulations shall complete these

self-evaluation requirements within one year after becoming recipients of Federal financial assistance.

§ 18.407 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 18.408 Notice.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment, or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated under § 18.407. A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipient's publication, and distribution of memorandums or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this section either by including appropriate inserts in existing materials and publications or by

revising and reprinting the materials and publications.

§ 18.409 Administrative requirements for certain recipients.

The Administrator may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with §§ 18.407 and 18.408 in whole or in part, when the Administrator finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 18.410 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Employment Practices

§ 18.411 Discrimination prohibited.

(a) *General.* (1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(3) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination in employment. The relationships referred to in this section include relationships with employment and referral agencies, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) *Specific activities.*

Nondiscrimination in employment applies to:

- (1) Recruitment, advertising, and the processing of applications for employment;
- (2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (3) Rates of pay or other forms of compensation and changes in compensation;
- (4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (5) Leaves of absence, sick leave, or any other leave;
- (6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;
- (7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
- (8) Employer sponsored activities, including social or recreational programs; and
- (9) Any other term, condition, or privilege of employment.

(c) *Collective bargaining agreements.* A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 18.412 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of a handicapped applicant or employee if such accommodation would enable him or her to perform the essential functions of the job unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include:

- (1) Making facilities used by employees readily accessible to and usable by handicapped persons; and
- (2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters and other similar actions.

(c) In determining under paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

- (1) The overall size of the recipient's program with respect to number of

employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's work force; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

§ 18.413 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question; and

(2) Alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Administrator to be available.

(b) A recipient shall select and administer tests concerning employment to best ensure that when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflect the applicant's or employee's impaired sensory, manual, or speaking skills (except when those skills are the factors that the test purports to measure).

§ 18.414 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into the applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 18.406(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 18.406(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite

applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Program Accessibility**§ 18.421 Discrimination prohibited.**

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 18.422 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its

entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such measures as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aids to beneficiaries, home visits, delivery of health, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with § 18.423 or any other methods that make its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in making its programs or activities readily accessible to handicapped persons. In choosing among available methods for complying with paragraph (a) of this section, a recipient shall give priority to methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare or other social service providers, and recipients that operate other than educational programs or activities.* If a recipient with fewer than fifteen employees finds after consultation with a handicapped person seeking its services that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the qualified handicapped person to other providers whose services are accessible. Where referrals are necessary, transportation costs shall not exceed costs to and from recipients' programs.

(d) *Time period.* A recipient shall comply with paragraph (a) of this section within 60 days of the effective date of this part except that when structural changes in facilities are necessary, these changes shall be made as soon as practicable, but not later than three years after the effective date of this part.

(e) *Transition plan.* If structural changes to facilities are necessary to meet the requirements of paragraph (a) of this section, a recipient shall develop a transition plan within six months of the effective date of this part setting forth the steps necessary to complete such change. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A

copy of the transition plan shall be available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information concerning the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 18.423 New construction.

(a) *Design and construction.* Each facility or part of a facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed so that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered so that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Building and Facilities Accessible to, and Usable by, the Physically Handicapped,"¹ published by the American National Standards Institute, Inc. (ANSI A117.1-1961(R1971)), which was approved on May 2, 1978 for incorporation by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those

¹ Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, NY, 10018. A copy of this standard is on file in the Federal Register Library.

standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to and usability of the facility is provided.

Elementary, Secondary, and Adult Education

§ 18.431 Application.

Sections 18.431—18.439 apply to elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance from the Veterans Administration and to recipients that operate or receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 18.432 Location and notification.

A recipient that operates a public elementary or secondary educational program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons their parents or guardians of the recipients's duty under §§ 18.431—18.439.

§ 18.433 Free appropriate public education.

(a) *General.* A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap.

(b) *Appropriate education.* (1) The provision of an appropriate education is the provision of regular or special education and related aids and services that:

(i) Are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met; and
(ii) Are based upon adherence to procedures that satisfy the requirements of §§ 18.434, 18.435, and 18.436.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a qualified handicapped person in or refer that person to a program other than the one that it operates as its means of carrying out the requirements of §§ 18.431—18.439. The recipients remain responsible for ensuring that the requirements of §§ 18.431—18.439 are

met with respect to any qualified handicapped person so placed or referred.

(c) *Free education.* (1) The provision of a free education is the provision of educational and related services without cost to the handicapped person or to his or her parents or guardian, except for those fees that are imposed on nonhandicapped persons or their parents or guardian. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers that person to a program not operated by the recipient as its means of carrying out the requirements of §§ 18.431–18.439, of payment for the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) If a recipient places a handicapped person in or refers that person to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost that would be incurred by the person or his or her parents or guardian if the person were placed in the program operated by the recipient.

(3) If placement in a public or private residential program is necessary to provide free appropriate public education to a handicapped person because of his or her handicap, the program, including non-medical care and room and board, shall be provided at no cost to the person or his or her parents or guardian.

(4) If a recipient has made available, in conformance with this section and § 18.434, a free appropriate public education to a handicapped person and the person's parents or guardian chooses to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or regarding the question of financial responsibility are subject to the due process procedures of § 18.436.

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part. A recipient that is not, on the effective date of this part, in full compliance with the requirements of

paragraphs (a) through (c) of this section shall meet those requirements at the earliest practicable time, but not later than October 1, 1981.

§ 18.434 Education setting.

(a) *Academic setting.* A recipient shall educate, or shall provide for the education of, each qualified handicapped person in its jurisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. In deciding whether to place a person in a setting other than the regular educational environment, a recipient shall consider the proximity of the alternate setting to the person's home.

(b) *Nonacademic settings.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, a recipient shall ensure that handicapped persons participate with nonhandicapped persons in those activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient in compliance with paragraph (a) of this section operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided in that facility are comparable to the other facilities, services, and activities of the recipient.

§ 18.435 Evaluation and placement.

(a) *Preplacement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation of any qualified person who, because of handicap, needs or is believed to need special education or related services before taking any action concerning the initial placement of the person in a regular or special program and any subsequent change in placement.

(b) *Evaluation procedures.* Elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance shall establish standards and procedures for the evaluation and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered to best ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflect the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure.)

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background and adaptive behavior;

(2) Establish procedures to ensure that information obtained from all sources is documented and carefully considered;

(3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the student, the meaning of the evaluation data and the placement options; and

(4) Ensure that the placement decision is made in accordance with § 18.434.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Education for the Handicapped Act is one means of meeting this requirement.

§ 18.436 Procedural safeguards.

(a) A recipient that operates a public elementary or secondary education program shall implement a system of procedural safeguards with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services. The system shall include:

(1) Notice;

(2) An opportunity for the parents or guardian of the person to examine relevant records;

(3) An impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel; and

(4) Review procedure.

(b) Compliance with the procedural safeguards of section 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 18.437 Nonacademic services.

(a) *General.* (1) Elementary, secondary, and adult education programs that receive or benefit from Federal financial assistance shall provide nonacademic and extracurricular services and activities in a manner which gives handicapped students an equal opportunity for participation in these services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* Elementary, secondary, and adult education programs that receive or benefit from Federal financial assistance and that provide personal, academic, or vocational counseling, guidance, or placement services to their students shall provide these services without discrimination on the basis of handicap and shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.*

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, an elementary, secondary, or adult education program or activity that receives or benefits from Federal financial assistance may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural activities shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical

education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation or differentiation is consistent with the requirements of § 18.434 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

§ 18.438 Adult education programs.

A recipient that operates an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity. The recipient shall take into account the needs of these persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 18.439 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not on the basis of handicap, exclude a qualified handicapped person from that program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 18.433(b)(1), within the recipient's program.

(b) A recipient may not charge more for providing an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate those programs in accordance with §§ 18.435 and 18.436. Each recipient to which this section applies is subject to §§ 18.434, 18.437, and 18.438.

Postsecondary Education

§ 18.441 Application.

Sections 18.441-18.447 apply to postsecondary education programs and activities that receive or benefit from Federal financial assistance from the Veterans Administration and to recipients that operate or receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 18.442 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient.

(b) *Admission.* In administering its admission policies, a recipient;

(1) May not apply limitations on the number or proportion of handicapped persons who may be admitted;

(2) May not use any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless:

(i) The test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question; and

(ii) Alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Administrator to be available;

(3) Shall assure itself that:

(i) Admissions tests are selected and administered to best ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflect the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) Admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) Admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiries as to whether an applicant for admission is a handicapped person. After admission, the recipient may inquire on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.*

When a recipient is taking remedial action to correct the effects of past discrimination under § 18.406(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its Federally assisted program or activity under § 18.406(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped.

(1) The recipient shall state clearly on any written questionnaire used for this purpose or make clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient shall state clearly that the information is being requested on a voluntary basis, that it will be kept

confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question to monitor the general validity of the test scores.

§ 18.443 General treatment of students.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other program or activity operated by a recipient to which this subpart applies.

(b) A recipient that considers participation by students in education programs or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handicapped student from any course, course of study, or other part of its education program or activity.

(d) A recipient shall operate its programs and activities in the most integrated setting appropriate.

§ 18.444 Academic adjustments.

(a) *Academic requirements.* A recipient shall make necessary modifications to its academic requirements to ensure that these requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by the student or to any directly related licensing requirement

will not be regarded as discriminatory within the meaning of this section.

(b) *Other rules.* A recipient may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or guide dogs in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its course examinations or other procedures for evaluating students' academic achievement in its program, a recipient shall provide methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills that will best ensure that the results of the evaluation represent the students' achievement in the course, rather than reflect the students' impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient shall ensure that no qualified handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 18.445 Housing.

(a) *Housing provided by a recipient.* A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to qualified handicapped students at the same cost as to others. At the end of the transition period provided for in § 18.422(e), this housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodations is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall assure itself

that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 18.446 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance to qualified handicapped persons, a recipient may not:

(i) On the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate; or

(ii) Assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that these employment opportunities, as a whole, are made available in a manner that would not violate §§ 18.411–18.414 if the opportunities were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates §§ 18.411–18.414.

§ 18.447 Nonacademic services.

(a) *Physical education and athletics.*

(1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation

or differentiation is consistent with the requirements of § 18.443(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of these organizations do not permit discrimination otherwise prohibited by §§ 18.441-18.447.

Health and Social Services

§ 18.451 Application.

Subpart F applies to health, and other social service programs and activities that receive or benefit from Federal financial assistance from the Veterans Administration and to recipients that operate or receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 18.452 Health and other social services.

(a) *General.* In providing health, or other social services or benefits, a recipient may not, on the basis of handicap:

- (1) Deny a qualified handicapped person these benefits or services;
- (2) Give a qualified handicapped person the opportunity to receive benefits or services that are not equal to those offered nonhandicapped persons.
- (3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 18.404(b)(2)) as the benefits or services provided to others;
- (4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or
- (5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons

with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights of consent to treatment shall ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency care.

(d) *Auxiliary aids.* (1) A recipient that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to give these persons an equal opportunity to benefit from the service in question.

(2) The Administrator may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) Auxiliary aids may include brailled and taped material, interpreters, and aids for persons with impaired hearing or vision.

§ 18.453 Drug and alcohol addicts.

A recipient that operates a general hospital or outpatient facility may not discriminate, with regard to a drug or alcohol abuser or alcoholic who is suffering from a medical condition, in the admission of that person for treatment of the medical condition, or in the treatment of the medical condition because of the person's drug or alcohol abuse or alcoholism.

§ 18.454 Education of institutionalized persons.

A recipient that operates or supervises a program or activity for persons who are institutionalized because of handicap and is responsible for providing training shall ensure that each qualified handicapped person, as defined in § 18.403(k)(2), in its program or activity is provided an appropriate education, as defined in § 18.403(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under §§ 18.431-18.439.

Procedures

§ 18.461 Procedures.

The procedural provisions applicable to title VI of the Civil Rights Act of 1964

apply to this part. These procedures are found in §§ 18.6 through 18.11 and Part 18b of this Chapter.

Appendix A—Statutory Provisions to Which This Part Applies

1. Payments to State Homes (38 U.S.C. 641-643).
2. State home facilities for furnishing domiciliary, nursing home, and hospital care (38 U.S.C. 5031-5037).
3. Community nursing home care (38 U.S.C. 620).
4. Sharing of medical facilities, equipment, and information (38 U.S.C. 5051-5057).
5. Assistance in establishing new state medical schools, grants to affiliated medical schools; assistance to health manpower training institutions (38 U.S.C. ch. 82).
6. Approval of educational institutions (38 U.S.C. 104).
7. Medical care for survivors and dependents of certain veterans (38 U.S.C. 613).
8. Space and office facilities for representatives of State employment service (38 U.S.C. 244(4)).
9. Space and office facilities for representatives of recognized national service organizations (38 U.S.C. 3402(a)(2)).
10. Vocational rehabilitation, post-Vietnam era veterans educational assistance, and administration of educational assistance (38 U.S.C. chs. 31, 32, 34, 35 and 36 respectively).
11. Automobile and adaptive equipment for certain disabled veterans and members of the Armed Forces (38 U.S.C. ch. 39).
12. Burial benefits (38 U.S.C. ch. 23).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 1615-2]

Approval and Promulgation of Implementation Plans: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of receipt.

SUMMARY: In order to satisfy the requirements of Part D of the Clean Air Act, as amended, the State of Missouri revised its State Implementation Plan in 1979. On April 9 and on May 9, 1980, EPA conditionally approved certain elements of Missouri's plan. On September 9, 1980, the State submitted documentation that two of these conditions have been fulfilled. These conditions involve a schedule for implementing an inspection and maintenance (I/M) program for vehicle emissions control and a commitment involving the adoption of difficult